

***United States Court of Appeals
for the Second Circuit***



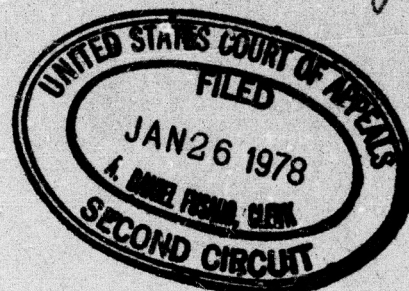
**BRIEF FOR
APPELLANT**

77-6209

JAN 26 1978

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IN THE
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT



DOCKET NO. 77-6209

REV. DONALD L. JACKSON

Plaintiff - Appellant,

vs.

UNITED STATES OF AMERICA & STATE OF NEW YORK

Defendants- Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF ON BEHALF OF PLAINTIFF - APPELLANT,

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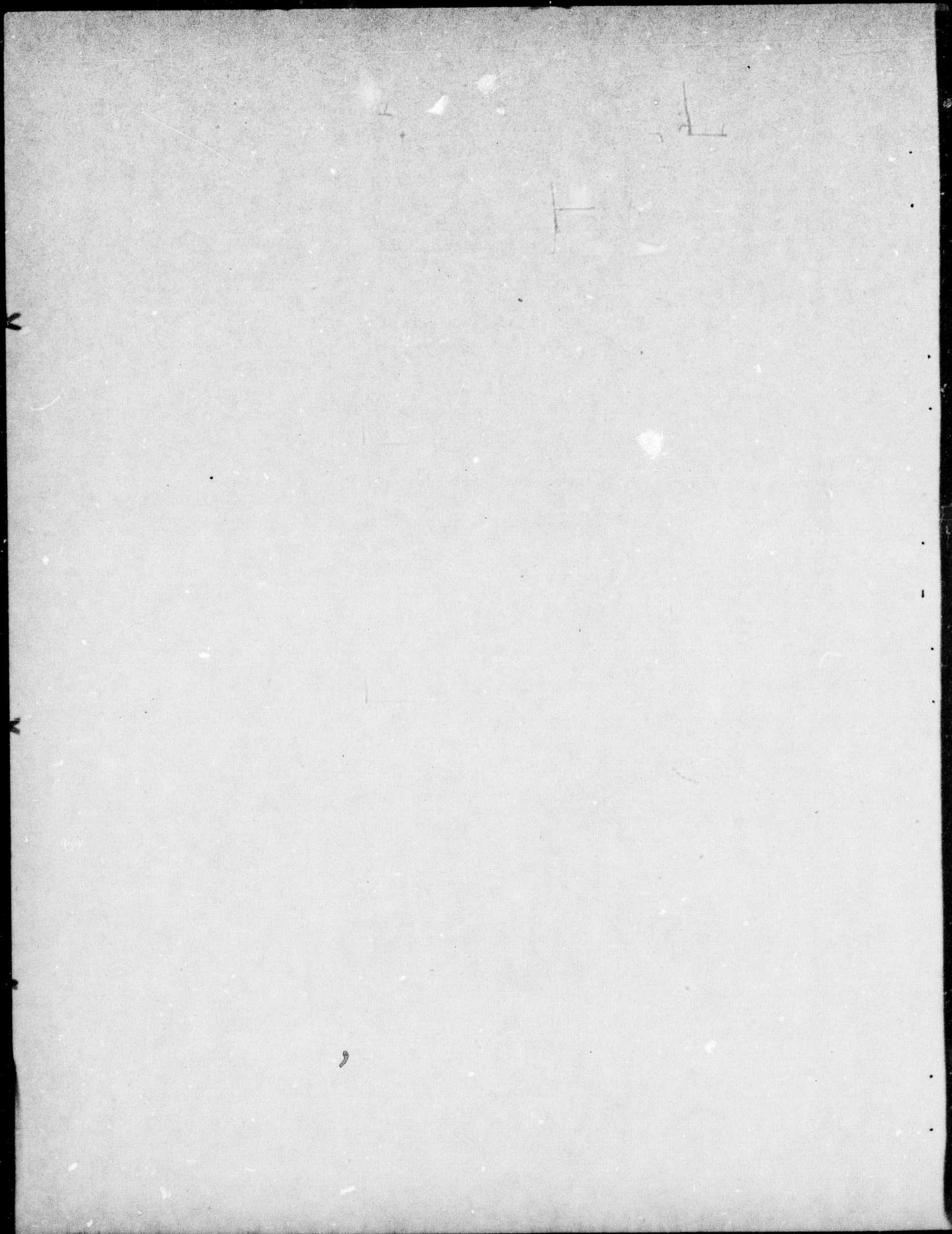
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QUESTION PRESENTED FOR REVIEW:

1. The failure of Defendants to OBEY the Court Order to answer or move against the complaint. New York State was granted to May 15, 1974, they did not answer or move against the complaint until May 21, 1974. United States of America, was granted 60 days, from May 24, 1974 to July 24, 1974, more than 20 months had passed and the Government had not answered or moved against the complaint, or given any reason why they failed to obey the Order of the Court. A Default Judgment should have been entered against both defendants, since the record had more than 35 documents, plus affidavits and memorandums, showing Plaintiff, was entitled to relief requested.
2. Title VII of the 1964 Civil Rights Act, authorizes award money damages in favor of private individuals against the State found to have discriminated, which is a bar to the use of the Eleventh Amendment by defendants FITZPATRICK v. BITZER 44 LW 5120 (1976).

3. Petitioners earned wages under rule 301.7623 of United States Treasury Dept. which may be as high as \$3 billion. There is no limited amount the 10% can be. In 1976, speaking with someone in the Commissioner of Internal Revenue Service Office, stated they had been lax, enforcing regulation of exempt foundations under 26 U.S.C. 501 (c) 3, however the Commissioner office claimed if the rules were enforced and each area was properly staff to do the job the fines collected against those foundations their reports indicates violated the provisions of 1969 Tax Reform Act, that the total amount collected probably would not exceed One Billion Dollars.

4. The illegal practice of allowing lawyers to file their nominating petitions in all recognized political partys, while non-lawyers are only allowed to file their nominating petition in the party they are a member of.

5. Electing Judges at-large, without residence requirement, which deprives defendants the right to a trial in the district.

5. Buffalo City Ordinance Chapter XII Section 19. That gives the Commissioner

of Public Work or the Director of Bldgs. or any employee of the City Duly Authorized by either of them may enter any premises in the City of Buffalo for the purpose of examining its condition. This Ordinance allows City inspectors to enter my home without a search warrant any hour of the day or night.

6. Federal funds are mingled with private oil funds, in the way of depletion allowance, then to allow oil firms to bid on oil lease lands and water, is a conflict of interest. United States of America, discriminates against the poor in favor of wealthy oil firms.

HISTORY OF THE LAWSUIT:

1. That Judge Curtin, erred in granting United States, additional time to answer or to move against the complaint since United States, gave no reason why they had not Obeyed the Court Order that granted them 60 day extension to July 24, 1974. Plaintiff's Motion filed for Default Judgment December 28, 1975, listed in Appeal Index # 27. The record contained ample material to support the entry of Default Judgment. Appeal Index # 3, Plaintiff's Motion for

Summary Judgment, April 19, 1974. Appeal Index # 5, Plaintiff's affidavit in opposition to Motion of N. Y . S Motion for Enlargement of time April 22, 1974. Appeal Index #11, Affidavit of Plaintiff in opposition to motion by N.Y.S to dismiss and in support of Motion of Plaintiff for Summary Judgment. May 28, 1974. Appeal Index # 14 Plaintiff motion for Three-Judge Court. Appeal Index # 18, Plaintiff Motion for ruling on Motion for Summary Judgment. December 2, 1974. Appeal Index # 21, Plaintiff's affidavit in support of Motion for three-judge court, etc. March 3, 1975. United States of America, disobeyed the Court Order by over 20 months, not answering or moving against the complaint.

BONANZA INTERNATIONAL INC, AND STEWART INVESTMENT INC. vs. JOSEPH CHARLES CORCELLER, JR. 480 F. 2d 613 (CA-5)1973.

"REFUSAL OF DEFENDANT TO OBEY COURT'S ORDERS CONSTITUTED SUFFICIENT GROUND FOR ENTRY OF A DEFAULT JUDGMENT AGAINST HIM."

FEDOR vs RIBICOFF 211 Fed. Supp. 520 1962.

RANK vs. U. S. 142 F. Supp. 1.

HENRY v. SNEDDERS 490 F. 2d 315.

STATEMENT OF THE CASE

The State of New York failed to obey the Court Order to answer by May 15, 1974.

Plaintiff is entitled to a default judgment. 10% wages is fixed amount. United States Government, did not deny owing Plaintiff wages. Page 7 of the complaint paragraph 13:

"THAT IT WAS WILFUL NEGLIGENCE ON THE PART OF UNITED STATES OF AMERICA, ITS AGENTS, SERVANTS AND EMPLOYEES, FOR NOT ENFORCING THE PROVISIONS OF UNITED STATES CONSTITUTION AND LAWS OF UNITED STATES, WHICH WOULD HAVE RESULTED IN COLLECTING OVER \$30 BILLION, PETITIONERS WAGES OR 10% WOULD BE OVER \$3 BILLION. SINCE ITS NEGLIGENCE ON THE PART OF UNITED STATES OF AMERICA, PETITIONER ASK THE COURT TO ORDER UNITED STATES TO PAY PETITIONER \$3 BILLION PLUS INTREST FROM 1971."

However I do not feel that the court should Order the foundations tax exemption be revoked inview of the fact any of the foundations will mail a copy of their annual report that is submitted to Internal Revenue, upon request their Annual Report covers detail activity of the foundation. The foundation by-laws are filed with Internal Revenue

Service. The Internal Revenue Service receives the Foundations Annual Report, and files the reports . The 1969 Tax Reform Act mandates the Internal Revenue to establish 16 Districts across the country to supervise the activities of foundations. There has been no supervision by the Internal Revenue Service. Since the foundations has made no attempt to hide their activities they are not the blame.

Plaintiff made a demand to the Internal Revenue Service for \$3 billion, and the Internal Revenue Service did forward Form 211, Application and Public Voucher for Reward for Original Information. The Voucher was signed and returned to Internal Revenue Service.

That the Internal Revenue Service was Notified November 24, 1971, after waiting a reasonable time without any response, I submitted several notices finally April 15, 1973, I received a letter signed by S. B. Wolfe, Director Audit Division of the Internal Revenue Service, stating that the Internal Revenue Service had no authority to eliminate racial discrimination and

require equal employment and equal grant making by Tax Exempt Organizations this is not correct, for the 1969 Tax Reform Act gives the Internal Revenue Service the authority. I was entitled to an answer in a much shorter period than 17 months. SLATE vs. MCFETRIDGE 42 L.W. 2156 (8-30-73). FREEDMAN vs. MARYLAND 380 U. S. 51 (1965).

"In Freedman, the Court invalidated provisions of Maryland censorship regulations which required submission of films to a board of censors unrestricted by limits of time on the censors' deliberation. The teaching of Freedman and the cases that follow it in that an application for a license or a permit to a public body resolved promptly and such resolution be made known to the applicant. Such requirements are a dictate of due process. The Chicago Park District officials 'failed to fulfill that duty and erred constitutionally by so doing, Sixteen days passed between the submission of an application for a permit and a response from Chicago Park District Officials. The reasons for the delay whatever they were, cannot justify the tardy response on any view of the facts,' Sixteen days passed between the submission of an application for a permit and a response."

Plaintiff has established the following:
That United States of America, defaulted

and disobeyed Court Order, there was large amount of papers filed additional to the complaint, Plaintiff have met the requirements to enter a default Judgment against United States of America.

Judge Curtin further errored by dismissing this lawsuit against the Defendant State of New York, quoting the Eleventh Amendment.

The Supreme Court most recent decision on the Eleventh Amendment the Court in FITZPATRICK v. BITZER 44 LW 5120 (1976)

"Left unquestioned its holding in Edelman. There, the Court permitted recovery of retroactive retirement benefits wrongfully withheld on the basis of sex discrimination.

Fitzpatrick, however, is distinguishable from the case, because

Fitzpatrick involved federal legislation authorizing federal courts, under Title VII of the 1964 Civil Rights Act, to award money damages in favor of private individuals and against the State found to have discriminated in employment. The present case before the Court is being sued under 1964

Civil Rights Act. Plus other enforcement provisions Voting Rights Act of 1965, and the 14th Amendment to U. S. Const.

HUEY v. BARLOGA 277 F. Supp 864 (1967).

(7) Neglect by State officials of their duty to take reasonable measures to protect oppressed from intimidation and violence used against them as part of a system of discrimination is, where officials have knowledge of use of force by one class of persons against another, tantamount to discrimination by State officials themselves and their neglect thus is "State Action" and is within ambit of Civil Rights Act 42 U.S.C.A 1985 (3) U.S.C. A. Const Amend 14.

(25) The Civil Rights Act is directed at the maladministration, neglect and disregard of laws by State and local officials, and has purpose of providing a federal remedy for deprivation of federally guaranteed rights 42 U.S.C.A. #1983, 1985.

BULLOCK vs. CARTER 405 U. S. 134.

A state status that restricts the exercise of such a fundamental right is invalid under the Equal Protection Clause, unless it can be shown that the burden imposed is necessary to promote a compelling state interest.

The United States Supreme Court held in the case,

WILLIAMS vs. RHODES 393 U. S. 23 (1968)

"Clearly, the Fifteenth and Nineteenth Amendments were intended to bar the Federal Government and the States from denying the right to vote on grounds of race and sex in presidential elections. And the Twenty - Fourth Amendment clearly and literally bars any State from imposing a POLL TAX on the right to vote 'for electors for President or Vice President'

Obviously we must reject the notion that Art. II # I, gives the States power to impose burdens on the right to vote, where such burdens are expressly prohibited in other constitutional provisions. We therefore hold that no State can pass a law regulating elections that violates the Fourteenth Amendment's command that 'No State shall... deny to any person... the equal protection of the laws.'

 "Invidious distinctions cannot be enacted without a violation of the Equal Protection Clause, ...
 ... In the present situation the State laws place burdens on two different, although overlapping, kinds of rights-the right of individuals to associate for the advancement of political belief, and the right of qualified voters regardless of their political persuasion, to cast their vote effectively. Both of these rights of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protects against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. Similarly we have said with reference to the right to vote: 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'

Justice Douglas wrote: in Lubin v Leonard Parish 42 L.W.
4435 March 1974.

While I join the Court's opinion I wish to add a few words, since in my view this case is clearly controlled by prior decisions applying the Equal protection Clause to wealth discrimination. Since classifications based on wealth are "traditionally disfavored," Harper v. Virginia Bd of Elections 383 U.S. 663, 668 (1966) the State's inability to show a compelling interest in conditioning the right to run for office on payment of fees cannot stand Bullock v. Carter 405 U. S. 134 (1972).

The Court first began looking closely at discrimination against the poor in the criminal area, in Griffin v. Illinois 351 U. S. 12 (1955), we found that de facto denial of appeal rights by an Illinois statute requiring purchase of a transcript denied equal protection to indigent defendants since there 'can be no equal justice where the kind of trial a man gets depends upon the amount of money he has' Id., at 19. In Douglas vs. California 372 U. S. 353 (1963), we found that the State had drawn "an unconstitutional line ... between rich and poor" when it allowed an appellate court to decide an indigent's case on the merits although no counsel had been appointed to argue his case before the appellate court. Just recently we found that the state could not extend the prison term of an indigent for his failure to pay an assessed fine, since the length of confinement could not under the Equal Protection Clause be made to turn on one's ability to pay.

Williams vs. Illinois 399 U. S. 235 (1970): see Tate v. Short, 401 U. S. 395 (1971). But criminal procedure has not defined the boundaries within which wealth discrimination have been struck down. In Boddie v. Connecticut 401 U. S. 371 (1971) the majority found that the filing fee which denied the poor access to the courts for divorce was a denial of Due Process; Mr. Justice Brennan and I in concurrence preferred to rest the result on equal protection. And it was the Equal Protection Clause the majority relied on in Lindsey v. Normet 405 U. S. 56, 70 (1972), in finding that Oregon's double bond requirement for appealing forcible entry and detainer actions discriminated against the poor "For them as a practical matter, appeal is foreclosed, no matter how meritorious their case may be."

Indeed, the Court has scrutinized wealth discrimination in a wide variety of areas. In Shapiro vs. Thompson, 394 U. S. 618 (1969), we found that deterring indigents from migrating into the State was not a constitutionally permissible State objective. Closer to the case before us here was Turner vs. Fouche 396 U. S. 346, 362, 364 (1970), in which the Court

found that Georgia could not constitutionally require ownership of land as a qualification for membership on the Board of Education, See Kramer vs. Union Free School Dist. 395 U. S. 621 (1969); Cipriano vs. Houma 395 U.S. 701 (1969). In Harper vs. Board of Election, Supra, we found a state poll tax violative of equal protection because of the burden it placed on the poor's exercise of the franchise. And in Bullock v. Carter 405 U. S. 124 (1972) we invalidated a Texas filing fee system virtually indistinguishable from that present here.

What we do today thus involves no new principle, nor any novel application, "A man's property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. Edward v. California 314 U. S. 160, 184 (1941) (Justice Jackson, concurring). Voting is clearly a fundamental right. Harper vs. Virginia Bd of Elections, supra, at 667, Reynolds v. Sims 377 U.S. 533, 561, 562. But the right to vote would be empty if the State could arbitrarily deny the right to stand for election. California does not satisfy the Equal Protection Clause when it allows the poor to vote but effectively prevents them from voting for one of their own economic class. Such an election would be a sham, and we have held that the State must show a compelling interest before they can keep political minorities off the ballot. Williams vs Rhodes 393 U. S. 23, 31 (1968). The poor may be treated no differently.

The Court held in Reynolds vs. Sims 377 U. S. 533, 562 (1964),

The right to vote is a fundamental right preservative of other basis rights.

"A state statute that restricts the exercise of such a fundamental right is invalid under the Equal Protection Clause, unless it be shown that the burden, imposed is necessary to promote a compelling state interest. Dunn, Supra; Bullock v. Carter, 405 U. S. 134,

The Court held in Educational Equality League v. Tate 472 F. 2d 612 (1973) (3) Under Fourteenth Amendment, all persons, colored or white stand equal before laws of States and Amendment contains necessary implications of positive immunity, or right, most valuable to colored race, of exemption from legal discrimination 42 U.S.C. 1983; U. S. C. A. Const. Amend. 14.

That the court held in Kusper, Vs. Pentikes, 42 L. W. 4003 (1973):

"There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. NAACP v. Button 371 U.S. 413, 430; Bates v. Little Rock, 361 U.S. 516, 522-523; NAACP v. Alabama, 357 U.S. 449, 460-461. The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. William v. Rhodes 393 U.S. 23, 30, United States v. Rebel 389 U.S. 258. To be sure, administration of the electoral process is a matter that the Constitution largely entrusts to the States. But, in exercising their powers of supervision over elections and in setting qualifications for voters, the States may not infringe upon basic constitutional protections. Dunn v. Blumstein 405 U.S. 330; Kramer v Union School District, 395 U.S. 621; Carrington v. Rash, 380 U.S. 89. As the Court made clear in Williams v. Rhodes, supra, unduly restrictive state election laws may so impinge upon freedom of association as to run afoul of the First and Fourteenth Amendments 393 U.S. at 30"

That the court held in Lubin v. Parish Registrar Recorder, County of Los Angeles 42 L. W. 4435 (1974):

"Historically, since the Progressive movement of the early 20th Century, there has been a steady trend toward limiting the size of the ballot in 'order to concentrate the attention of the electorate on the selection of a much smaller number of officials and so afford to the voters the opportunity of exercising more discrimination in their use of the franchise.' In sharp contrast to this fear of an unduly lengthy ballot is an increasing pressure for broader access to the ballot. Thus, while progressive thought in the first half of the of the century was concerned with restricting the

ballot to achieve voting rationality, recent decades brought an enlarged demand for an expansion of political opportunity. The Twenty-fifth Amendment, the Twenty-sixth Amendment, and the Voting Rights Act of 1965, 42 U.S.C. 1973 (1970), reflect this shift in emphasis. There has also been a gradual enlargement of the Fourteenth Amendment's equal protection provisions in the area of voting rights:

"It has been established in recent years that the Equal Protection Clause confers the substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population. See Reynolds v. Sims 377 U.S. 533 San Antonio School District v. Rodriguez 411 U.S. 1 (1973).

Green v. McBrey 360 U. S. at 492. "The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the Liberty and Property concepts of the Fifth Amendment."

United States v. Manning 215 F. Supp 272 (1963)

(15) "States have the unquestioned right to fix the qualifications of voters, to regulate the registration of voters, and to conduct elections, but state laws and administration of state law are subject to federal constitutional standards established in the Fourteenth and Fifteenth Amendment, U.S.C.A. Const. art. I § 4: U.S.C.A. Const. Amends. 10, 14, 15."

(18) "The Fourteenth and Fifteenth Amendments are enforceable by appropriate legislation and are not limited to elections for federal office. U.S.C.A Const. Amends. 14, 15."

(19) "The Fifteenth Amendment deals not only with denial of the right to vote but also with the registration of voters. U.S.C.A. Const. Amend. 15."

(25)" A suit under the Civil Rights Act of 1960 is a controversy between ~~the United States and~~ the named defendants and not between individuals who have been denied their voting rights and the defendants. 42 U.S.C.A 1971 (c).

The Court held in Yil We v. Hopkins 118 U.S. 356,370.

"At the root of the present controversy is the right to vote a "fundamental political right" that is "Preservative of all rights" The right of expression and assembly may be illusory if the to vote is undermined."

The Court held in Buckingham v. State ex rel. 35 A.2d 903, "The Legislature has no power to add to the Constitutional qualifications of voters."

The court held in Palagis v. Regan 126 P2d 818.

"Statute which impose additional qualification or desqualifications to those imposed by constitutional provisions relating to the right to vote and hold office are void."

The Court held in Graumen v. Jefferson County Fiscal Court 171 S. W. 2d 36.

"Constitutional provisions providing for "Free" and equal election is violated when the same opportunity for voting is not given to all persons entitled to the ballot, or when the right of franchise is restrained by Civil or Military Authority. All regulations of election franchise must be reasonable, uniform and impartial."

That the State of New York allows, the City of Buffalo, County of Erie. and the entire Statgte deprive defendant a trial in the District or Neighborhood, because they authorize the election of

Judges at Large as well as the County, for two reasons to dilute the Black voting strength which results in no Blacks being elected other than one of the White desire to designate, the second is to make sure the ruling whites keep a dominate hand over the Blacks To jail any Black who dares to demand his equal rights, by making sure that Petitioner or any other Black man cannot obtain a fair and impartial trial in the District where the crime was committed.

Zimmer v. McKeithen 42 L. W. 2171 (CA-5) En-Banc 9/12/73
Reversing 41 L. W. 2099, "At-large elections in county, with history of racial discrimination, in which Blacks constitutes only 46 Percent of registered voters, though they comprise 59 percent of total population, unconstitutionally dilutes black voting strength."

To further give the ruling whites assurance of control Article # 6 Section 137 of the New York State Election Law, allows lawyers seeking a Judicial position on the ballot to file their nominating petitions in all recognized political parties, while non-lawyers can only file their nominating petitions in the political party they are a member of, the Court held in United Ossing Party vs. Hayduk 357 f. Supp 962 (1972)

"Voting Act provisions that if State covered by Act enacts any prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force on November 1, 1968, such law is inoperative, as potentially discriminatory, until it has been approved as required by such provision must be given broadest possible scope to reach any state enactment which alters election law of a covered state in even a minor way. Voting Rights Act of 1965, 5 as amend 42 U.S.C.A 1973."

The common law has been abandoned many years, however to punish anyone that does not go along with the power structure. The State of New York allows the City of Buffalo to pass Ordinances; to deprive defendants charged with an offense or crime the right to a jury trial.

The State of New York with the knowledge of United States Department of Justice, because I submitted an affidavit to the Justice Department complaining of Defendants State of New York election procedure and how they used the laws in these cases to get their enemies and to limit Freedom of Speech. The City of Buffalo Housing Ordinance, gives the Court the

right to fine a person up to \$1,000 with limit of 15 days in jail. The defendant is barred by law from demanding a jury trial.

A defendant owning a building that cost \$500,000 to tear down or \$100,000 to fix up, they will be Summons to the Housing Court on a criminal charge for failure to fix up their property many persons owning a house living on fix income does not have the money to make repairs, still they will be told they are guilty and will fine them \$1,000 and frequently sentence them to 30 to 75 days in jail, plus order the defendants to tear down their building, and if the City goes upon private property and gives the contract to one of their contracting friends, that kicks back to City hall \$300. to \$500 under the table for the contract the Court will order the defendant to demolite the building even if the cost is \$500,000 or will order the defendant to go to City Hall and arrange for payment of tearing down the building. This case is a combination of criminal and civil. The city is using criminal action to collect a civil bill. Petitioner would be entitled to a Jury Trial under provision of the 6th Amendment and under provisions of the 7th Amendment to United States Constitution. See Knoll v. Davidson 42 L. W. 2091 (Sup Ct.) Aug 15, 1974.

See People v. Jones 42 L. W. 2003 6/5/73, "Sixth Amendment bars trial of state defendant by jury drawn from judicial district that excludes judicial district in which crime was committed."

See William v. Florida 399 U. S. 78. See Duncan vs. Louisiana 391 U. S. 145, both cases cover the vicinage and right to a jury trial.

Defendant approved the actions of the City of Buffalo, by continual supplying State and Federal funds to the City. The City passed City Ordinance Chapter XII Section 19.

RIGHT TO ENTER BUILDING
THE COMMISSIONER OF PUBLIC WORK OR THE
DIRECTOR OF BUILDINGS OR ANY EMPLOYEE OF THE
CITY DULY AUTHORIZED BY EITHER OF THEM MAY
ENTER ANY PREMISES IN THE CITY OF BUFFALO FOR
THE PURPOSE OF EXAMING ITS CONDITION.

I have been very vocal against corruption in City Government, I want to cite a case, but before I do I want to say, if a person fails to pay their Gas or Electric Bill the utilities company can cut off their services, In the City of Buffalo, water bill is a tax and a lien on the property. The City must have a Court Order to cut off water, however the City of Buffalo goes upon private property without any Court Order and cuts off the water for non-payment, and frequently they break off the cut off stem which is in the property owners yard, then the City will dispatch the health inspector, to the property owners home give him a summons to appear in Court, and will be fined for not fixing the cut off value that the City broke. This value must be dug up and the job will cost between \$400. and \$1,200.

Additional reason that preliminary injunctive relief and Summary Judgment should be granted. To keep control of the Judicial Branch of Government in the hands of a select few, and to further the conspiracy to deprive Petitioner his Civil Rights and Equal protection of the law and to use the law to punish anyone that disagrees with the power structure. Judges are elected at Large-with no resident requirement. Petitioner charged with a crime cannot obtain a trial in the District or vicinage.

The Court held : Rice v. Sims, S. C. 3 Hill 5,7,
 "Vicinage," within the rule the jury is to come from the vicinage, means district."

The court held in : Ex Parte McNeeley, 14 S. E. 436,
36 W. Va. 84, 90, 32 AM St. Rep. 831, 15 L.R.A. 726

"The word 'vicinage' is defined as meaning neighborhood or vicinity, and does not mean County."

The Court held in Baxter v. Commonwealth, 166 S. W. 2d
24,38, 292 Ky. 204,

"The rule at common law that a jury must come from the 'vicinage' was developed and adhered to so that an accused could be tried in his own neighborhood to allow him the advantage of his good character and standing in his vicinage to be tried by the jurors who knew him."

The City of Buffalo has 9 Councilman Districts. A Councilman is elected in each District, that the Councilman must live in his District, the County has 20 Legislative District, each Legislator must live in his District. All Judges are elected at large with no resident requirements in the City and County.

The Court held in Reese v. Dallas 43 L.W. 2285 (CA-5) en
Banc 12/30/74:

"County system that provides for election of all four of its County Commissioners at large, but that requires one Commissioner to reside in each of four unequally populated District, violates Fourteenth Amendment."

Domestic Relations Court of City of New York held, In Re Cotton 30 N.Y.S. 2d 421.

(4) " A person charged with an offense must be tried within the limits of the local where the offense was committed, in the County, Borough, City or State, so that he may be tried by his peers within the boundaries where the offense was committed."

The City of Buffalo Ordinance XII Section 19, that states, Director Building or the Commissioner of Public Work, may authorize any City employee to enter my home without a warrant or my permission is illegal. U. S. Supreme Court in CAMERA v. MUNICIPAL COURT 387 U. S. 523 and SEE v. SEATTLE 387 U. S. 541, "THAT CITY AND HEALTH INSPECTORS MUST HAVE SEARCH WARRANTS TO ENTER HOMES AND BUILDINGS."

That President Nixon, announced whereby he had "WAIVED" all the rules regarding securing loans to seek for Oil and minerals, I was denied the right to make application under the Waiver, and further discriminated by the Department of Interior, because of the system used excludes Poor Blacks from taking part in bidding on Oil and Mineral claims.

The the bidding is a cover to direct valuable government rich lands into wealthy people hands and to keep poor from gaining any of these lands. These Oil firms obtain Depletion allowance, then they bid on valuable Government properties, buy them, and at the end of the fiscal year, they deduct the full cost of the lands from their operating income. which amount to a gift to them from the Government. U. S. Supreme Court held in BURTON v. WILMINGTON 365 U. S. 715:

"When federal funds are mingled with private funds the Government becomes a joint participant, in the operation of the Business, and must obey the Equal Protection Clause of the 14th Amendment to U. S. Const."

The Court held in PARAGON JEWEL COAL CO. vs. 380 U. S. 380 U. S. 624.

"The purpose of depletion allowance for Federal Income Tax purpose is to compensate owner of wasting mineral assets for part exhausted in production, so that when minerals are done, owner's capital and capital assets remain unimpaired."

Since the Oil Firms are partners with the U. S. Government, and Oil firms being allowed to bid against Plaintiff

is a violation of the Equal Protection Clause of the 14th Amendment of U. S. Const.

CONCLUSION:

That this Court clearly shown the authority of the Internal Revenue Service in its decision,

Jackson v. The Statler Foundation 496 F 2d 623 (1974).

This Court held in United Ossing Party v. Hayduk & Wart 357 F. Supp 962.

(4) New York Statute which provided that no candidate for office other than judicial or state-wide office would be eligible to receive nomination and to appear on ballot as candidate of both a political and independent group violated First Amendment and invidiously discrimination in violation of fourteenth Amendment.

In the case Ezell Littleton vs. Pavton Berling 468 F. 2d 389, United States

Supreme Court held State of Ohio could be sued. U. S. Supreme Court held in Scheue Adminstratix v. Rhodes 42 LW 4543, 1974, Eleventh Amendment does not shield State officials accused of depriving another of Federal right.

Buckingham v. State. Killoran 35 A2d 903

"The Legislature has no power to add to the Constitutional qualifications of voters."

Every element has been met to enter a default judgment against United States of America. United States Government defaulted. 14 days after July 24, 1974, the date that ended the 60 days extension granted by the Court to Government to answer or move against the complaint the file remain in the District Court. Each time this case was appealed to this Court, it was mention in the Brief, that United States Government had been in default. The record contained many papers motions for Summary Judgment, memorandums etc. the amount of money for wages, is a fixed amount, United States of America was in default more than 20 months, and had disobeyed a Court Order, a Default Judgment for wages should be entered.

The Buffalo Housing Court, is used as a tool to deprive individuals their Civil Rights, and the election of Judges at large-instead by Council or Legislative District, for period of 10 years, while the Councilman is elected for 2 years, the Mayor is elected for 4 year term,

the Governor of the State is elected for 4 years. Why then the Judges be elected for 10 years. The laws establishing laws for the Courts are illegal for the State Assembly and State Senate was illegal composed.

Article 1 Section 6 Sub. Par 2, of United States Constitution:

"NO PERSON HOLDING ANY OFFICE UNDER THE UNITED STATES, SHALL BE A MEMBER OF EITHER HOUSE DURING HIS CONTINUANCE IN OFFICE."

The State Assembly and the State Senate has many members who are Lawyers and members who are Reserve Officers.

A lawyer is an officer of the Court and a member of the Judicial Branch of Government, which would not make him eligible to sit in the legislative Branch of Government, and a Reserve Officers, if appointed by the President would be an officer of United States, and if appointed by the Governor, would be an officer of the State.

January 11, 1978.

Respectfully submitted,
Rev. Donald L. Jackson
Rev. Donald L. Jackson

A P P E N D I X

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IN THE
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

DOCKET NO. 77-6209

REV. DONALD L. JACKSON

Plr Appellant,

vs.

UNITED STATES OF AMERICA & STATE OF NEW YORK

Defendants - Appellees.

A P P E N D I X

REV. DONALD L. JACKSON
P. O. BOX 494
BUFFALO, N. Y. 14205
Phone 716- 855-2775

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON

Plaintiff

vs.

UNITED STATES OF AMERICA AND
STATE OF NEW YORK,

ORDER
Civil Action No.
74-439

Defendants.

The defendant, State of New York, having moved for an enlargement of time in which to answer or move against the Plaintiff's complaint, it is hereby

ORDERED, that the time for the defendant, State of New York, to answer or move against the complaint be enlarged to MAY 15, 1974.

Dated:

May 1, 1974

/s/ AUBRY E. ROBINSON JR.
U. S. J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON

Plaintiff

V

Civil Action
No. 74-439

UNITED STATES OF AMERICA, et al.,

Defendants

O R D E R

Upon consideration of the motion of defendant United States of America to change venue and for enlargement of time, and it appearing to the Court that transfer to the Western District of New York would be for the convenience of the parties and witnesses, and serve the interest of justice, it is by the Court this 23rd day of May, 1974

ORDERED that this action be and the same hereby is transferred to the United States District Court for the Western District of New York, pursuant to 28 U.S.C. 1404 (a); and it is further

ORDERED that the time within which defendant United States of America must answer, move or otherwise plead be and it hereby is extended to and including sixty days from the date of this order.

/s/ AUBRY E. ROBINSON JR.
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON

Plaintiff

v.

VIV. 74-293

UNITED STATES OF AMERICA
AND STATE OF NEW YORK,

Defendants

APPEARANCES: Plaintiff pro se.

RICHARD J. ARCARA, ESQ., United States Attorney (Theodore J. Burns, ESQ., of Counsel). Buffalo, New York, for the defendant United States of America.

Louis J. LEFKOWITZ, ESQ, Attorney General, State of New York (Rugh Kessler Toch, Solicitor General and Michael F. Colligan, Assistant Attorney General, of counsel), Albany, New York for defendant State of New York.

In this action the plaintiff has moved for an order of the court providing, among other things, the following relief, He seeks an injunction against the operation and enforcement of Article 6, Section 20 of the New York State Constitution on the grounds that it

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violates plaintiff's rights under the Voting Rights Act of 1964 and the ninth, fourteenth, fifteenth and twenty-fourth amendments to the United States Constitution (para. 4 of complaint). He also seeks an injunction prohibiting the election of New York State judges on the grounds that "Article 6. Section 138" (apparently Section 137 of the New York Election Law) violates plaintiff's constitutional rights.

Argument was heard on plaintiff's motion for injunctive relief and for a three-judge court on March 3, 1975.

The first challenged section, Art. 6 # 20.a reads in relevant part as follows:

...No person, other than one who holds such office at the effective date of this article may assume the office of judge of... City court outside of the city of New York unless he has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

A litigant is not entitled to a three-judge court where his constitutional claim is insubstantial.

Swift & Co. v. Wickham, New York, 382 U.S. 111 (1965);
Rosenthal v. Bd. of Educ, 497 F. 2d 726 (2d Cir. 1974).
The constitutional challenge to Art. 6 # 20 is insub-
stantial. "THERE IS NO FEDERAL RIGHT TO RUN FOR OR HOLD
STATE ELECTIVE OFFICE." Petersen v. Knutson, 367 F. Supp.
515, 517 (D. Minn. 1973) citing Snowden v. Hughes.
321 U. S. 1 (1944). In the Petersen case it was held that
a disbarred attorney had no right to run for justice of
the Minnesota Supreme Court because he did not meet the
requirements of the Minnesota constitution. The New
York courts have upheld the application of Art. 6 # 20
as an attribute of the unified court system. See, e.g.,
In Re Storace, 30 App. Div, 2d 220, 291, N.Y.S. 2d 416
(4th Dept. 1968) ; Application of O'Connor, 180 Misc. 630,
43 N.Y.S. 2d 412 (Sup. Ct., Onondaga Cty., 1943).
Further, the section is not constitutionally offensive
because it does not involve a restriction upon access
to the ballot. There is no support for the argument
that there is a constitutional right to vote for a

person not admitted to the bar as a judicial candidate. Cf. Rubino et al. v. Ghezzi 74-2374, 74-2435 (2d Cir.. March 3, 1975). Professional qualifications for a judicial position are not an indivis individual requirement. Plaintiff's request for a three-judge court and for an order enjoining the election of New York State judges is denied.

The other New York statute challenged by plaintiff appears to be Section 137 of the New York Election Law (See plaintiff's Affidavit in Support of Three-Judge Court, etc., para. 1, which refers to "Article 6 Section 138 of the New York Election Law"). Plaintiff's requests for the convening of a three-judge court and for injunctive relief with regard to Section 137 are denied. The constitutional claim is insubstantial. Section 137 prohibits designating petitions for primary elections, nominations of nonmembers of political parties, and petitions designating for a primary election a person not enrolled as a member of the party referred to in the designating petition.

Exceptions to these prohibitions are contained in # 137.5 which provides:

This section shall not be construed to apply to a political party designating or nominating candidates for the first time, nor to candidates for judicial office.

The plaintiff claims that the section is unconstitutional because it "allows judges to file their nominating petitions in all recognized political parties, while non-lawyers are limited only to one party." "(N) ot every limitation or indicidental burden on the exercise of voting rights is subject to a strigent standard of review." Bullock v. Carter, 405 U.S. 134,143 (1972), citing McDonald v. Board of Election, 394 U. S. 802 (1969)/ The Supreme Court has recognized that a state has a legitimate intrest in regulating the number of candidates on the ballot. Jenness v. Fortson, 403 U.S. 431, 432 (1971) ; Williams v. Rhodes, 393 U.S. 23, 32 (1968). The New York statute does not absolutely bar the right to vote for a nonmember of a political party at the

primary election.

It is true that the law in question establishes a difference in the machinery and mechanics between a nomination by a political party of a person who is an enrolled member of that party and of a person who is not. It does not preclude the nomination by a political party of a person who is not a member of that party nor is the majority of the enrolled voters of a political party foreclosed from nominating for office a person who is not a member of that party.

Ingersoll v. Curran, 188 Misc. 1003, 1007, 70 N.Y.S 2d 435, 439 (Sup. Ct., Albany Cty., 1947), aff'd, 297 N.Y. 522, 74 N.E. 2d 465. See also Ingersoll v. Heffernan, 188 Misc. 1047, 71 N.Y.S. 2d 687 (Supp. Ct. N.Y. Cty., 1947; aff'd 297 N.Y. 524, 74 N.E. 2d 466.

Section 137 does not contain an offensive scheme discriminating against one class of persons as was the case in Bullock v. Carter, supra. It simply excludes judicial candidates and political parties designating or nominating candidates for the first time from the requirement of party membership for purposes

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of party nomination at a primary election. Non-party members may run in the primary if a majority of the party committee so authorizes or may wage a write - in campaign.

The New York State defendants have moved to dismiss the complaint. The court shall not consider that motion at this time.

Plaintiff's motions for the convening of a three-judge court and for preliminary injunctive relief are hereby denied.

So ordered.

Dated: March 28, 1975

/s/ JOHN T. CURTIN
United States District
Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON

Plaintiff Civ. 74-293

-v-

ORDER

UNITED STATES OF AMERICA
AND STATE OF NEW YORK

Defendants

The plaintiff having filed a motion for the convening of a three-judge court on July 30, 1974, and the Court having denied plaintiff's motion by a Decision and Order entered on March 28, 1975, and the plaintiff having filed a motion on June 2, 1975 for an enlargement of time within which to file a notice of appeal from this Court's Order of March 28, 1975, and the defendants not objecting to the relief requested by the plaintiff, after due deliberating, it is

ORDERED that plaintiff's time to file a notice of appeal from this Court's Order of March 28, 1975, denying his motion for the convening of a three-judge court, be and it hereby is extended to June 28, 1975.

DATED: Buffalo, New York, June 16, 1975.

/s/(p) JOHN T. CURTIN
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,

Plaintiff

-vs-

Civ-74-293

UNITED STATES OF AMERICA and
STATE OF NEW YORK,

Defendants

The court will defer ruling on the motions to dismiss made by defendants United States of America and State of New York until after the completion of discovery. The court will also defer ruling on plaintiff's application for a jury trial for the present.

However, after considering the facts set forth in the affidavit of Theodore J. Burns, Assistant United States Attorney, of March 15, 1976, I grant his motion permitting the late filing of an answer or responsive pleading. The confusing history of this litigation set forth in his affidavit compels that relief. Any pleading or motion to be filed shall be filed within fifteen (15) days of this order.

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SO ordered.

/s/ JOHN T. CURTIN
United States District Judge

DATED: April 5, 1976 v

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,

Plaintiff

-vs-

Civ-74-293

UNITED STATES OF AMERICA and
STATE OF NEW YORK,

Defendants

The plaintiff has sued the United States and the State of New York, apparently alleging several quite disparate causes of action. A review of the complaint reveals that he apparently is alleging the following causes of action:

- (1) That the granting of tax-exempt status to charitable foundations who discriminated against plaintiff is unlawful;
- (2) That there is the discriminatory granting of oil leases by the defendants;
- (3) That the manner of electing judges in New York State is a violation of plaintiff's constitutional rights.

The complaint is quite difficult to follow and it may be that he is attempting to allege other causes. On October 13, 1977 he filed a memorandum in which he

asserted, among other claims, that the United States Government was withholding his wages and that federal funds were being mingled with private funds.

Plaintiff's complaint is prolix, difficult to follow, and deals with causes which the plaintiff has asserted in other actions which were either dismissed or withdrawn.

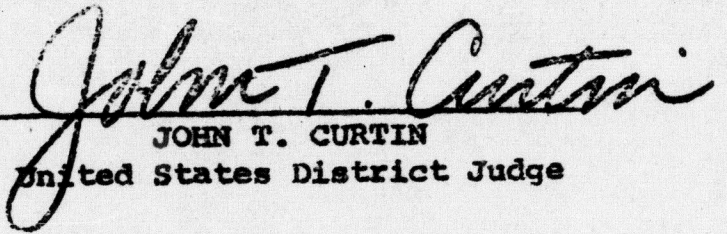
As to his suit against New York State, since plaintiff alleges that he is a citizen of the State of New York, this court lacks jurisdiction to hear a suit against the State by one of its own citizens. Furthermore, if this is considered as an action under § 1983, the complaint must fail because the State of New York is not a "person" within the meaning of that section.

In regard to his claim against the federal government, the plaintiff has attempted to litigate similar claims in prior suits. See Jackson v. Statler Foundation, Civ-71-592 and Civ-74-135. These suits were dismissed in a decision and order of this court dated July 13, 1975.

In regard to the other claims, plaintiff's claims as to each are completely deficient. None state a claim

and shall be dismissed as to both defendants.

So ordered.


JOHN T. CURTIN
United States District Judge

DATED: November 1, 1977



Rev. Donald L. Jackson,
L.L.B., D.D.

P. O. BOX 494
BUFFALO, NEW YORK 14205
PHONE NO. (716) 855-2775

JAN 26 1978

CERTIFICATE OF SERVICE

Two copies of the Brief dated January 11, 1978, was served on Asst. U. S. Attorney Theodore J. Burns, by Leaving the 2 copies at his office at 502 U. S. Courthouse, Buffalo, New York, on January 24, 1978.

Two copies of the Brief dated January 11, 1978, was served on ^{DOUGLAS S. CRENN, ASST} ~~Mr. Michael F. Colligan, Asst.~~ Attorney General State of New York, by leaving 2 copies at Attorney Generals Office, at State Office Building, Court and Franklin, Street Buffalo, New York, on January 24, 1978.

Dated January 24, 1978.

Rev. Donald L. Jackson
Rev. Donald L. Jackson

May we please have a copy
of Rev. Jackson's Brief?
Thanks —